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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,726	09/30/2003	Joshua S. Allen	RSW920030148US1 (116)	6352
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EXAMINER				
DONABED, NINOS J				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/675,726

Applicant(s)

ALLEN ET AL.

Examiner

NINOS DONABED

Art Unit

2444

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

Response to Amendment

This communication is in response to Applicant's RCE amendment dated 9/22/2010. Claim(s) 1-23 has/have been cancelled. Claim(s) 24-38 has/have been added. Claim(s) 24-38 is/are pending in the application.

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The "machine readable storage medium" is not defined in Applicant's specification. As such correction should be made because as is, the medium could include non-statutory subject matter including signals.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 24-38 rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasawa (United States Patent Application Publication 20020116234) in view of Betge (United States Patent Application Publication 20050177629).

Regarding claim 24,

Nagasawa teaches a computer hardware system for estimating a service level agreement (SLA) breach value for a resource, comprising:

a performance history database including historical performance data for the resource; and **(See figures 1-2 and paragraphs [0058] – [0062], Nagasawa teaches a database containing performance data for resources)**

at least one computer hardware device coupled to the performance history database, wherein the at least one computer hardware device is configured to: **(See paragraphs [0047] – [0051], Nagasawa teaches a computer coupled to the database)**

retrieve the historical performance data for the resource, and **(See paragraphs [0058] – [0062], Nagasawa teaches retrieving performance data for the resource)**

Nagasawa does not explicitly teach generate the estimated SLA breach value by processing the historical performance data for the resource.

Betge teaches generate the estimated SLA breach value by processing the historical performance data for the resource. **(See paragraphs [0046] – [0050], Betge)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Betge with Nagasawa because both deal with optimizing resources and SLA within a network system. The advantage of incorporating generate the estimated SLA breach value by processing the historical performance data for the resource of Betge into Nagasawa is that allows optimum development of network configurations avoiding both over dimensioning and failure to meet SLAs (Service Level Agreements). It allows creation of planning

proposals based on both network data and customer resource and service requirements thus making the system more robust and efficient. **(See paragraphs [0005] - [0008], Betge)**

Regarding claim 25,

Nagasawa and Betge teach the computer hardware system of claim 24, wherein the at least one computer hardware device is configured to build a SLA. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation to combine for claim 24.

Regarding claim 26,

Nagasawa and Betge teach the computer hardware system of claim 24, wherein the at least one computer hardware device is configured to generate a chart, the chart includes the historical performance data for the resource and a current SLA breach value setting. **(See paragraphs [0070] – [0078], Betge)** See motivation to combine for claim 24.

Regarding claim 27,

Nagasawa and Betge teach the computer hardware system of claim 26, wherein the at the at least one computer hardware device is configured to receive a proposed SLA breach value setting and regenerate the chart to included the proposed SLA breach value setting. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation to combine for claim 24.

Regarding claim 28,

Nagasawa and Betge teach the computer hardware system of claim 24, wherein the at least one computer hardware device is configured to generate, using a compliance percentage, the estimated SLA breach value. **(See paragraphs [0058] – [0062], Nagasawa)**

Regarding claim 29,

Nagasawa teaches a method for estimating a service level agreement (SLA) breach value for a resource, comprising: **(See abstract, Nagasawa)**

retrieving historical performance data for the resource from a performance history database; **(See figures 1-2 and paragraphs [0058] – [0062], Nagasawa teaches a database containing performance data for resources)**

Nagasawa does not explicitly teach generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value.

Betge teaches generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and . **(See paragraphs [0046] – [0050], Betge)**

displaying, using the computer hardware system, the estimated SLA breach value. . **(See paragraphs [0046] – [0050], Betge)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Betge with Nagasawa because both deal with optimizing resources and SLA within a network system. The advantage of incorporating generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value of Betge into Nagasawa is that allows optimum development of network configurations avoiding both over dimensioning and failure to meet SLAs (Service Level Agreements). It allows creation of planning proposals based on both network data and customer resource and service requirements thus making the system more robust and efficient. **(See paragraphs [0005] - [0008], Betge)**

Regarding claim 30,

Nagasawa and Betge teach the method of claim 29, wherein the historical performance data is based upon an aggregation of customers accessing the resource. **(See paragraphs [0047] – [0049], Betge)** See motivation to combine for claim 29

Regarding claim 31,

Nagasawa and Betge teach the method of claim 29, wherein the historical performance data is based upon a single specific customer accessing the resource. **(See paragraphs [0023] – [0026], Betge)** See motivation to combine for claim 29

Regarding claim 32,

Nagasawa and Betge teach the method of claim 29, wherein the generating comprises identifying an SLA breach value trend based upon the historical performance data; and predicting a future SLA breach value based upon the trend. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation to combine for claim 29.

Regarding claim 33,

Nagasawa and Betge teach the method of claim 29, wherein the generating comprises receiving a compliance percentage; and computing said estimated SLA breach value based upon the compliance percentage. **(See paragraphs [0047] – [0049], Betge)** See motivation to combine for claim 29

Regarding claim 34,

Nagasawa teaches a machine readable storage having stored therein computer program code for estimating a service level agreement (SLA) breach value for a resource, the computer program code, which when executed by a computer hardware system, causes the computer hardware system to perform: **(See abstract, Nagasawa)** retrieving historical performance data for the resource from a performance history database; **(See figures 1-2 and paragraphs [0058] – [0062], Nagasawa teaches a database containing performance data for resources)**

Nagasawa does not explicitly teach generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data

for the resource; and displaying, using the computer hardware system, the estimated SLA breach value.

generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and **(See paragraphs [0046] – [0050], Betge)**

displaying, using the computer hardware system, the estimated SLA breach value. **(See paragraphs [0046] – [0050], Betge)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Betge with Nagasawa because both deal with optimizing resources and SLA within a network system. The advantage of incorporating generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value of Betge into Nagasawa is that allows optimum development of network configurations avoiding both over dimensioning and failure to meet SLAs (Service Level Agreements). It allows creation of planning proposals based on both network data and customer resource and service requirements thus making the system more robust and efficient. **(See paragraphs [0005] - [0008], Betge)**

Regarding claim 35,

Nagasawa and Betge teach the machine readable storage of claim 34, wherein

the historical performance data is based upon an aggregation of customers accessing the resource. **(See paragraphs [0047] – [0049], Betge)** See motivation to combine for claim 29

Regarding claim 36,

Nagasawa and Betge teach the e machine readable storage of claim 34, wherein the historical performance data is based upon a single specific customer accessing the resource. **(See paragraphs [0023] – [0026], Betge)** See motivation to combine for claim 29.

Regarding claim 37,

Nagasawa and Betge teach the machine readable storage of claim 34, wherein the generating comprises identifying an SLA breach value trend based upon the historical performance data; and predicting a future SLA breach value based upon the trend. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation to combine for claim 29.

Regarding claim 38,

Nagasawa and Betge teach the machine readable storage of claim 34, wherein the generating comprises receiving a compliance percentage; and computing said estimated SLA breach value based upon the compliance percentage. **(See paragraphs [0047] – [0049], Betge)** See motivation to combine for claim 29

Response to Arguments

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any response to this Office Action should be **faxed** to (571) 273-8300 or **mailed** to:

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NINOS DONABED whose telephone number is (571)270-3526. The examiner can normally be reached on Monday-Friday, 7:30 AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. D./
Examiner, Art Unit 2444

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444